

INTERNAL REVENUE SERVICE

Central Region

Date: SEP 13 1996



Department of the Treasury

Address any reply to: -
Appeals Office
P. O. Box 2026
Cincinnati, OH 45201

Employer Identification No.

[REDACTED]

Key District:
Cincinnati

Person to Contact:

[REDACTED]

Telephone Number:

[REDACTED]

Dear Ms. Boyd:

We have considered your appeal of the adverse determination as to your exempt status under section 501(c)(4) of the Internal Revenue Code by the key District Director.

Your exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code is hereby denied.

You are required to file Federal income tax returns on Form 1120 for any years which are still open under the statute of limitations. Based on the financial information you furnished, it appears that returns should be filed for the years [REDACTED] through [REDACTED]. You should file these returns with the key district director, EP/EO Division within 30 days from the date of this letter, unless a request for an extension of time is granted. you should file returns for later tax years with the appropriate service center shown in the instructions for those returns.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

[REDACTED]

Associate Chief, Appeals

Internal Revenue Service
District Director

Department of the Treasury
P.O. Box 2508
Cincinnati, Ohio 45201

Date: DEC 07 1994

Employer Identification Number:
[REDACTED]

Person to Contact:
[REDACTED]

Contact Telephone Number:
[REDACTED]

Reply to:
[REDACTED]

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(4) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the Office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If we do not hear from you within the time specified, this will become our final determination.

Sincerely yours,
[REDACTED]

District Director

Enclosures: 3

12/6/94

[REDACTED] was incorporated on [REDACTED] in the State of [REDACTED] as a Homeowners Association, which encompasses an area which includes [REDACTED] subdivisions and a lake which separates the [REDACTED] subdivisions. The purposes of the organization are (1) To maintain, use, and operate for recreational purposes, the lake located on the association's property; (2) to enforce the Covenants contained in the Restrictions of [REDACTED]; and (3) to make and enforce reasonable rules and regulations necessary to fulfill the purposes of the Corporation.

Membership certificates are issued to all purchasers or owners of lots in each subdivision at the rate of one (1) membership per lot adjoining the lake. There are [REDACTED] lots adjoining the lake and therefore [REDACTED] members of the organization.

Activities of the organization include (1) the treatment and maintenance of the lake and the surrounding shoreline, (2) maintain the emergency spillway, (3) maintaining the overflow pipe, (4) treat, maintain, and beautify the island located in the center of the lake, (5) encourage wildlife inhabitants, and (6) administer and enforce covenants and restrictions for preserving the architecture and appearance of structures located within the neighborhood. The organization estimates that approximately [REDACTED]% of its time is devoted to administering and enforcing the covenants and restrictions, while the financial information presented below, indicates that the organization will devote nearly all of its financial resources to preserving, maintaining, and beautifying the lake.

It is indicated on Schedule B of the Form 1024, Application for Recognition of Exemption under Section 501(a)* or for Determination Under Section 120, that the organization does not own any common property or facilities. Therefore, the organization does not maintain any common property. The property which the lake is located on is divided in ownership equally between the [REDACTED] individual persons who own lakefront property. Each owner's portion of the lake extends halfway across the lake to meet with the property of the adjoining owner. The organization covers an area which contains [REDACTED] subdivisions which are separated by a lake located between the [REDACTED] subdivisions. The [REDACTED] subdivisions each have [REDACTED] access roads which allow the public to enter the subdivisions. None of the lake, or any other property contained within the organization's territory is open to the public. The lake is purely for the benefit of the lakefront property owners. The organization does not serve a community which bears a reasonable recognizable relationship to an area which could be identified as a governmental unit or instrumentality. It appears that the organization's primary function is to maintain property owned by private individuals and that the organization does not conduct any civic or social welfare activities for the benefit of a community.

The organization indicates that its total income will come entirely from the dues payments of members. Annual dues per member are presently \$[REDACTED]. Total dues have averaged approximately \$[REDACTED] to \$[REDACTED] per year, and are anticipated to be approximately \$[REDACTED] in the near future.

The organization has average expenses which are approximately \$[REDACTED] per year. These expenses have been used to buy supplies such as

chemicals to treat the lake, stocking the lake with fish, feed for the fish, flowers, and other such items to beautify the area. Any excess revenues are expected to be used as a reserve to fund similar future projects.

Section 501(c)(4) of the Code provides for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

Section 501(c)(4) of the Code provides, in part, for exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Regulations states that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterment and social improvements.

Revenue Ruling 74-99, 1974-1 C.B. 131., indicates that a homeowners association must serve a "community" which bears a reasonable recognizable relation to an area ordinarily identified as governmental; the common areas or facilities which it owns or maintains must be for the use and enjoyment of the general public.

Revenue Ruling 80-63, 1980-1 C.B. 116., attempts to clarify Rev. Rul. 74-99, and brings out the point that a homeowners association which does not represent a community, cannot restrict the use of its facilities and areas, and be exempt under section 501(c)(4), and that it does not necessarily follow that an organization which does represent a community may exclude the general public from use of its facilities.

The organization does not serve a community which bears a reasonable recognizable relationship to an area which could be identified as a governmental unit or instrumentality, and does not have any common areas which are open to, or may be enjoyed by the general public. The organization serves the interests of private property owners and is not operated for civic or social welfare purposes which serve the betterment of a community. All of these requirements are outlined as criteria to be exempt from Federal Income Tax under section 501(c)(4) in Rev. Rul. 74-99, and Rev. Rul. 80-63. Therefore, [REDACTED], does not qualify for exemption from Federal income tax under section 501(c)(4) of the Code.